

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Petition of tw telecom. inc. et al., To Establish)	WC Docket No. 11-188
Regulatory Parity in the Provision of Non-TDM)	
Based Broadband Transmission Services)	

COMMENTS OF COMPTTEL

COMPTTEL, through undersigned counsel, hereby submits its comments in support of the above-captioned Petition of tw telecom. inc. *et al.*, to reestablish parity in the regulation of non-TDM based packet switched broadband services and optical transmission services. As set forth in the Petition, Verizon was granted forbearance from enforcement of the *Computer Inquiry* rules and Title II of the Communications Act with respect to its non-TDM based packet switched broadband and optical transmission services by operation of law when the Commission failed to act on its petition for forbearance within the statutory time frame.¹ Thereafter, AT&T,² BellSouth,³ Qwest,⁴ Embarq,⁵ Frontier and Citizens⁶ filed petitions for forbearance asking for

¹ See, FCC News Release, “Verizon Telephone Companies’ Petition for Forbearance From Title II and *Computer Inquiry* Rules With Respect To Their Broadband Services Is Granted By Operation of Law,” WC Docket No. 04-440 (rel. Mar. 20, 2006).

² See *In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 (rel. Oct. 12, 2007).

³ See *In the Matter of Petition of BellSouth Corporation for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 (rel. Oct. 12, 2007).

⁴ See *In the Matter of Qwest Petition for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 08-168 (rel. Aug. 5, 2008).

relief from the *Computer Inquiry* rules and Title II regulation “comparable to that granted Verizon when its similar petition for forbearance was deemed granted.”⁷

While affording these other incumbent carriers some regulatory forbearance relief for their non-TDM based packet switched broadband and optical transmission services, the Commission stopped short of granting them relief “comparable to that granted Verizon” by operation of law. Instead, the Commission granted forbearance only from enforcement of dominant carrier tariffing and pricing regulation and certain *Computer Inquiry* requirements for these carriers’ broadband services.⁸ At the same time that it granted this more limited forbearance to AT&T and BellSouth, the first of the “me too” petitioners, the Commission committed to “issue an order addressing Verizon’s forbearance petition, as well as the other BOC forbearance petitions seeking comparable relief, on grounds comparable to those set forth in this order within *30 days*” in an effort “to avoid persistent regulatory disparities between similarly-situated competitors, and . . . to minimize the time in which they are treated

⁵ See *In the Matter of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. §160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements*, WC Docket No. 06-147, Memorandum Opinion and Order, FCC 07-184 (rel. Oct. 24, 2007).

⁶ See *In the Matter of Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 06-147, Memorandum Opinion and Order, FCC 07-184 (rel. Oct. 24, 2007).

⁷ AT&T and BellSouth Forbearance Order at ¶13; Qwest Forbearance Order at ¶14; Embarq, Frontier and Citizens Forbearance Order at ¶13.

⁸ AT&T and BellSouth Forbearance Order at ¶¶38-39, 52-53; Qwest Forbearance Order at ¶¶ 38-39; 58-59; Embarq, Frontier and Citizens Forbearance Order at ¶¶38-39; 51-53.

differently.”⁹ The Commission also committed to address the forbearance petitions filed by Embark, Frontier and Citizens “soon thereafter.”¹⁰

The Commission made those commitments more than four years ago. Nonetheless, it has yet to issue an order addressing Verizon’s Title II and *Computer Inquiry* forbearance petition nor has it taken any other steps to ensure regulatory parity between Verizon and other similarly-situated competitors providing non-TDM based packet switched broadband and optical transmission services. The Commission’s inaction has resulted in the very consequences the Commission claimed that it sought to avoid -- “persistent regulatory disparities between similarly-situated competitors” – and has maximized, rather than minimized, the time in which Verizon has been allowed to enjoy its favored status as a provider of packet switched broadband and optical transmission services free of the regulation to which all other similarly situated competitors are subject.¹¹ When the Commission ruled on Qwest’s Title II and *Computer Inquiry* forbearance petition in August 2008, it again expressed concern about eliminating regulatory disparities between similarly-situated competitors, citing the language from the AT&T and BellSouth Forbearance Order, but that concern apparently only extended to the disparities that existed in dominant vs. non-dominant carrier regulation of non-TDM based packet switched broadband and optical transmission services.¹²

In every instance where the Commission has ruled on the merits of an incumbent LEC’s petition for forbearance from Title II and *Computer Inquiry* regulation, it has determined that the

⁹ AT&T and BellSouth Forbearance Order at ¶50 and n. 187 (referencing the Qwest Petition) (emphasis added).

¹⁰ *Id.* at n. 187.

¹¹ *Id.* at ¶50.

¹² Qwest Forbearance Order at ¶¶ 49-51 and n. 180.

Title II requirements applicable to non-dominant carriers must continue to be enforced with respect to those carriers' non-TDM based packet switched broadband and optical broadband transmission services in order to ensure that the carriers' charges, practices, classifications and regulations are just, reasonable and not unjustly or unreasonably discriminatory, in order to protect consumers and in order to promote competitive market conditions.¹³ Ironically, in the one instance where the Commission "took no action addressing whether grant of Verizon's [forbearance] petition is consistent with the statutory forbearance criteria,"¹⁴ Verizon was relieved of the obligation to comply with all Title II requirements, including those applicable to non-dominant carriers, when providing non-TDM based packet-switched broadband and optical transmission services. The time is long overdue for the Commission to fulfill its commitment to address the discriminatory regulatory treatment afforded Verizon versus the treatment afforded other incumbent and competitive providers of non-TDM based packet switched broadband and optical transmission services. Verizon obtained its favored regulatory status as a result of the Commission's inaction and the Commission's continuing inaction preserves in place the "persistent regulatory disparities between similarly-situated competitors."

For the forgoing reasons and those stated in the Petition of tw telecom, *et al.*, the Commission should "issue an order addressing [the relief sought in] Verizon's [deemed granted] forbearance petition . . . on grounds similar those set forth" in the AT&T and BellSouth

¹³ See Section 10 of the Communications Act, 47 U.S.C. § 160, and AT&T and BellSouth Forbearance Order; Qwest Forbearance Order; Embarq, Frontier and Citizens Forbearance Order.

¹⁴ Qwest Forbearance Order at n. 69.

Forbearance Order,¹⁵ the Qwest Forbearance Order and the Embarq, Frontier and Citizens Forbearance Order.

Respectfully submitted,

/s/

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¹⁵ AT&T and BellSouth Forbearance Order at ¶50 and n. 187; Qwest Forbearance Order; and Embarq, Frontier and Citizens Forebearance Order.